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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,355	01/26/2001	Thomas A. McPhee	FIS920000169	7885

29505 7590 12/17/2003

DELIO & PETERSON, LLC  
121 WHITNEY AVENUE  
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EXAMINER

KASENGE, CHARLES R

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Office Action Summary**

Application No.

09/770,355

Applicant(s)

MCPHEE ET AL.

Examiner

Charles R Kasenge

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## **Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## **Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## **Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothschild et al. U.S. Patent 5,946,661. Referring to claims 1-5, 10-12, 16-20, and 21, Rothschild discloses a method for controlling production or manufacturing costs by obtaining measurements of unit manufacturing for a multiplicity of products or production lines and having a started units number for a plurality of processes (col. 1, lines 7-12); comprising the steps of: determining an approved units number for said plurality of processes (col. 3, lines 30-35); determining a unit production cost for each said unit in said plurality of processes (col. 3, lines 17-29); calculating an unapproved units number for each said process (col. 4, lines 1-9); calculating a cost of yield measurement for each of said plurality of processes by multiplying said unapproved units number by said unit production cost for said each said unit (col. 4, lines 1-9); and comparing said cost for each unapproved unit for each said process (col. 13, lines 53-66). Rothschild discloses a method of claim 1 further comprising the steps of: providing an expected yield measurement for each of said plurality of processes (col. 14, lines 15-20); calculating an expected approved units number by multiplying said started units number by said expected yield measurement (col. 4, lines 1-9); calculating an actual yield for each of said plurality of processes (col. 4, lines 52-60); providing a comparison of said cost of yield with said actual yield for each said plurality of

Art Unit: 2125

processes (col. 2 and 3, lines 63-67 and 1-6).

Referring to claims 6-9, 13-15, Rothschild discloses the method of claim 5 further comprising the step of: calculating a subsequent actual unapproved units number for a plurality of processes by subtracting said subsequent expected approved units number from a subsequent actual approved units number (col. 7, lines 62-67). Rothschild discloses the method of claim 5 wherein said yields are recalculated with subsequent data and tabulated for comparing said yields (col. 13, lines 53-66). Rothschild discloses the method of claim 5 wherein said plurality of processes run simultaneously (col. 5, lines 8-19). Rothschild discloses the method of claim 5 further comprising the step of: applying resources to said processes having the highest cost of yield based on said comparing of said costs of yield measurements (col. 2 and 3, lines 63-67 and 1-6).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kasenge whose telephone number is 703 305-8592. The examiner can normally be reached on Monday through Friday, 8:30 - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703 308-0538. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-3900.

Application/Control Number: 09/770,355

Page 4

Art Unit: 2125

CK

December 11, 2003

*L. P. Picard*

LEO PICARD  
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